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Attorney for Larry Anthony McDaniel

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHILLIP D. HURBACE et al.,

Defendants.

Case No. 2:17-cr-00110-APG-DJA

**Stipulation to Continue Restitution
Hearing and Sentencings (sixth request)**

IT IS HEREBY STIPULATED AND AGREED, by and between Jason M. Frierson, United States Attorney, through Richard Anthony Lopez and Mina Chang, Assistant United States Attorneys, counsel for the United States of America, Osvaldo E. Fumo, Esq., counsel for defendant Phillip D. Hurbace, Lisa A. Rasmussen, Esq., counsel for defendant Sylviane Della Whitmore, and Jacqueline Tirinnanzi, Esq., counsel for defendant Larry Anthony McDaniel, that the Court continue the restitution hearing scheduled for February 8, 2024, at 1:30 p.m. and the sentencing hearings scheduled for February 13, 2024, at 1:30 p.m., 2:30 p.m., and 3:30 p.m., (ECF 393) to a date convenient to the Court, preferably no sooner than 30 days from the current dates.

This stipulation is entered for the following reasons:

- 1 1. On January 17, 2024, Defendant McDaniel's previous counsel was granted
2 his motion to withdraw from the case. ECF 403. Counsel Tirinnanzi was
3 appointed that same day to represent Mr. McDaniel. ECF 405. Counsel
4 Tirinnanzi is in the process of obtaining and reviewing Mr. McDaniel's file
5 and relevant materials, and working with Mr. McDaniel and others to provide
6 competent representation at this stage in the proceedings. Additionally,
7 counsel has other competing obligations existing prior to the January 17,
8 2024, appointment that make the current sentencing date challenging, but is
9 confident that 30 days will provide adequate time for preparation and
10 scheduling.
- 11 2. No further requests are anticipated.
- 12 3. Defendant Hurbace has again been hospitalized in Northern Nevada and is
13 currently under doctor's orders not to travel, making him unable to be present
14 in Las Vegas for the currently scheduled restitution hearing next week and
15 potentially the sentencing hearing.
- 16 4. This continuance is not sought for purposes of delay, but to ensure that all
17 parties can be present at hearings in compliance with Federal Rule of
18 Criminal Procedure 43(a)(3) and to provide new counsel adequate time to
19 prepare.
- 20 5. The additional time requested by this stipulation is reasonable pursuant to
21 Fed. R. Crim. P. 32(b)(2), which states that the "court may, for good cause,
22 change any time limits prescribed [for sentencing] in this rule." Furthermore,
23 a delay in sentencing does not implicate or undermine the defendant's speedy
24 trial rights under the United States Constitution, which terminated upon
25 conviction. *See Betterman v. Montana*, 136 S.Ct. 1609, 1617-18 (2016).
- 26 6. For the reasons stated above, the ends of justice would best be served by a
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1 continuation of the deadline. Denial of this request for continuance of the
2 deadline could result in a miscarriage of justice.

3 7. Defendants are out of custody and do not object to the request for
4 continuance.

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6 Dated this 2nd day of February 2024.

7 Respectfully Submitted,

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9 /s/Osvaldo E. Fumo

10 OSVALDO E. FUMO, ESQ.
11 Counsel for Defendant HURBACE

/s/ Richard Anthony Lopez

 RICHARD ANTHONY LOPEZ
 MINA CHANG
 Assistant United States Attorneys

12 /s/ Jacqueline Tirinnanzi
13 JACQUELINE TIRINNANZI, ESQ.
14 Counsel for Defendant MCDANIEL

15 /s/ Lisa Rasmussen
16 LISA A. RASMUSSEN, ESQ.
17 Counsel for Defendant WHITMORE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHILLIP D. HURBACE et al.,

Defendant.

CASE NO. 2:17-cr-00110-APG-DJA

**[Proposed] Order granting Stipulation to
Continue Restitution Hearing and
Sentencings (Sixth Request)**

Based on the pending stipulation of counsel, and good cause appearing therefore, the
Court finds that:

1. On January 17, 2024, Defendant McDaniel's previous counsel was granted his motion to withdraw from the case. ECF 403. Counsel Tirinnanzi was appointed that same day to represent Mr. McDaniel. ECF 405. Counsel Tirinnanzi is in the process of obtaining and reviewing Mr. McDaniel's file and relevant materials, and working with Mr. McDaniel and others to provide competent representation at this stage in the proceedings. Additionally, counsel has other competing obligations existing prior to the January 17, 2024, appointment that make the current sentencing date challenging, but is confident that 30 days will provide adequate time for preparation and scheduling.
2. No further requests are anticipated.
3. Defendant Hurbace has again been hospitalized in Northern Nevada and is currently under doctor's orders not to travel, making him unable to be present in Las Vegas for the currently scheduled restitution hearing and potentially

1 the sentencing hearing.

- 2 4. This continuance is not sought for purposes of delay, but to ensure that all
3 parties can be present at hearings in compliance with Federal Rule of
4 Criminal Procedure 43(a)(3) and to provide new counsel adequate time to
5 prepare.
- 6 5. The additional time requested by this stipulation is reasonable pursuant to
7 Fed. R. Crim. P. 32(b)(2), which states that the “court may, for good cause,
8 change any time limits prescribed [for sentencing] in this rule.” Furthermore,
9 a delay in sentencing does not implicate or undermine the defendant’s speedy
10 trial rights under the United States Constitution, which terminated upon
11 conviction. *See Betterman v. Montana*, 136 S.Ct. 1609, 1617-18 (2016).
- 12 6. For the reasons stated above, the ends of justice would best be served by a
13 continuance of the deadline. Denial of this request for continuance of the
14 deadline could result in a miscarriage of justice.
- 15 7. Defendants are out of custody and do not object to the request for
16 continuance.
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ORDER

Based upon the stipulation of the parties and good cause appearing, it is hereby ORDERED that the restitution hearing currently scheduled for February 8, 2024, at 1:30 p.m., is reset to 9:30 on March 12, 2024, in Courtroom 6C. The government is not seeking any restitution against Mr. McDaniel, and he and his counsel are excused from attending the restitution hearing.

IT IS FURTHER ORDERED that the sentencing hearings currently scheduled for February 13, 2024 at 1:30 p.m., 2:30 p.m. and 3:30 p.m. are hereby reset to:

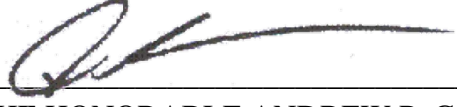
9:30 a.m. on March 14, 2024 for Philip D. Hurbace;

10:30 a.m. on March 14, 2024 for Larry Anthony McDaniel; and

1:30 p.m. on March 14, 2024, for Sylviane Della Whitmore; all in Courtroom 6C.

No further extensions will be granted absent extraordinary circumstances.

DATED: February 5, 2024



THE HONORABLE ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE